

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of McLeodUSA
Telecommunications Services, Inc. Against
Qwest Corporation for Collocation Power
Charges

ISSUE DATE: June 20, 2006

DOCKET NO. P-421/C-06-691

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

McLeodUSA Telecommunications Services, Inc. (McLeod) offers competitive local telecommunications services to residential and business customers in Minnesota, including 49 wire centers in which McLeod provides local service using its own switching facilities. To provide service in these markets, McLeod leases collocation space from Qwest Corporation (Qwest) pursuant to Section 251(c)(6) of the Telecommunications Act of 1996 and the parties' interconnection agreement, as amended between the parties and approved by the Commission.

McLeod installs equipment in these collocation spaces and uses this equipment to obtain access to local "last mile" facilities, or "unbundled loops." McLeod then uses the last mile facilities obtained from Qwest, in combination with its own network facilities, to provide local telecommunication services to customers in Minnesota.

On May 9, 2006, McLeod filed a complaint under Minn. Stat. § 237.462 against Qwest, claiming that Qwest has overcharged McLeod for collocation power in Minnesota by over \$500,000 over the past 20 months, and continues to overcharge McLeod by approximately \$27,000 each month. The complaint sought specific remedial action and asked the Commission to conduct an expedited proceeding under Minn. Stat. § 237.462, subd. 6, instead of contested case proceedings.

On May 24, 2006, Qwest filed an answer denying the claims, counterclaiming that Qwest has properly billed the disputed amounts pursuant to its interconnection agreement, and agreed that an expedited proceeding in this case is appropriate.

On June 8, 2006, this matter came before the Commission for procedural direction. At the hearing both McLeod and Qwest agreed that the matter might be resolved through proceedings in front of

an administrative law judge (ALJ). The parties have requested that the matter be handled expeditiously, with the ALJ's report being completed and with a return to the Commission by September 30, 2006.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 237.081, subd. 1a. The Commission finds that it cannot resolve the issues raised in the Complaint on the basis of the record before it. Those issues turn on specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

The primary issue to be addressed is the amount Qwest is to bill McLeod for collocation charges.

The parties shall address the above issue in the course of contested case proceedings. They may also raise and address other issues relevant to the Complaint.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Allan W. Klein, 1 Heather Place, St. Paul, Minnesota, 55102-2615; (651) 291-8815.

B. Hearing Procedure

• *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the

Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O’Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2218; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are McLeod, Qwest and the Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will inform the parties of its time and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The parties request that this matter be resolved promptly, and recommend a return date by the end of September, 2006. The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit his final report in time to allow the Commission adequate opportunity for thorough consideration of the case.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts

7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers the issues raised in McLeod's complaint to the Office of Administrative Hearings for contested case proceedings, with a recommendation to be completed by September 30, 2006, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Complaint of McLeodUSA MPUC Docket No. P-421/C-06-691
Telecommunications Services, Inc. Against
Qwest Corporation for Collocation Power OAH Docket No.
Charges

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, 1 Heather Place, St. Paul, Minnesota, 55102-2615; (651) 291-8815

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____